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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,412	07/24/2003	Daniel B. Gibbs	7629	1077

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT PAPER NUMBER

3635

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/626,412

Applicant(s)

GIBBS, DANIEL B.

Examiner

Chapman E. Jeanette

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>patent copies with annotations</u> .   |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26(is/are) rejected under 35 U.S.C. 103(a) as being unpatentable over by Eicher, III (55340095) in view of Schworer ( 5653415) and Smith (Re. 32,815) Eicher, III discloses an apparatus for setting and maintaining the dimensions of a door frame comprising:

1. a first head plate 18
2. a first arm 22 connected to the first head plate
3. a second head plate 18
4. a second arm connected to the second plate
5. the second arm being adjustably engageable with said first arm
6. the first head plate includes a facing edge defining a notch, adjacent element 34, in a side opposite said connection to the first arm
7. the second head plate includes a facing edge defining a notch, adjacent element 34, in a side opposite said connection to the second arm
8. the first head plate includes a positioning finger 30 extending outward from a side of the facing edge in a direction opposite said connection to the first arm

9. the second head plate includes a positioning finger 30 extending outward from a side of said facing edge in a direction opposite said connection to the second arm

Most door frames obviously include opposing first and second sidewalls each having a doorstop mounted thereon. This structure is very common in the art of door frames. The first and second head plates of Eicher III would clearly engage a first/ second side walls of a frame and the first/second edge having a notch located for admitting the first and second doorstop mounted on the first side wall. See figure 2 and annotations on patented copy. Note: Most of the recited amended language is functional or intended use.

Eicher III lacks the plurality of indexing apertures on the first and second arm. Eicher III also lacks the adjustment mechanism associated with the first and second arm and the adjustment mechanism being retractably engageable with the plurality of indexing apertures for locking said first arm in a plurality of positions relative to the second arm and the positions allowing the apparatus to be used with door frames having a plurality of dimensions. Eicher uses a different adjustment mechanism.

Schworer discloses a setting apparatus with two arms including a plurality of indexing apertures. Smith discloses a support apparatus with the adjustment mechanism 58, figure 4/6 associated with the first and second arm 32/38 and the adjustment mechanism being retractably engageable with the plurality of indexing

apertures 46 for locking said first arm in a plurality of positions relative to the second arm. Specifically Smith discloses an adjustment mechanism associated with the two telescopic arms. The adjustment mechanism comprising at least one retractably engageable member 58 for selectively releasable engagement with a selected one of the plurality of indexing apertures 46/46a to lock the arms in any one of a plurality of discrete positions to thereby establish positions between 50 and 24. The first and second arms includes a pair of diametrically opposed apertures 46/46a defined transversely there through. The adjustment mechanism 58 comprises a pair retractably engaging members located in the pair of apertures. See annotations on patent copy. The retractable engaging members being biased to retractably extend through said pair of apertures and retractably engage the indexing apertures in the arms. If the recited mode of adjustable securing means were used in Eicher, the positions would be established between the first and second facing edges wherein the plurality of discrete positions allow the apparatus to be used to facilitate the installation of the door frames to accommodate doors having one of a plurality of standard widths. Eicher is adjustable to allow a plurality of discrete positions. The two secondary references merely offer an alternative securing means. Both Eicher and Schworer discloses an adjustable device whereby the distance between the first facing edge and the second may be varied and to allow the distance between the edges to be set to a desired one of a plurality of discrete distances to facilitate installation of door frames to accommodate doors having one of a plurality of standard widths. Regarding Eicher, the first and second head plates are arranged and configured so that (claims recite: configures to that) they may be

placed into engagement with the first and second sidewalls, respectively at any position from the bottoms to the tops of the first and second sidewalls. The plurality of discrete distances may comprises at least three difference nominal standard widths; See column 1, lines 1-24 and column 2, lines 46-50.

Schworer and Smith each teach arms with measuring indicia, 9 and 64, respectively. The indexing apertures on both references are diametrically opposed pairs. Smith and Schworer each discloses a first arm which is telescopically engaged with said second arm; the first and second arms comprising first and second hollow arms having first and second ends. Smith specifically discloses first and second arms including a pair of diametrically opposed apertures defined transversely therethrough and the adjustment mechanism disposed between said pair of diametrically opposed apertures; at least a portion of the mechanism being biased to retractively extend through the opposed apertures and retractively engage said apertures.

It would have been obvious to one of ordinary skill in the art to modify Eicher III to include an alternative adjustment means incorporating indexing apertures in order to measure and set specific door frame sizes as shown by the two secondary references to lock the measurements in place as shown by Smith. The spacing or the measuring scale employed has been considered a matter of choice. One of ordinary skill in the art would have appreciated any scale which would enable the apparatus to be employed as intended.

Regarding the method claim: Eicher III discloses a method for setting a door frame comprising the steps of:

- Positioning and anchoring a first sidewall of the door frame to a surface 100/102/104
- Abutting the first and second header plate 18 of the door frame setter against the first side wall of the door frame
- Extending the setter apparatus to a precise, predetermined length and as modified by the secondary references, extending the apparatus in accordance with the measuring indicia
- Anchoring the second sidewall of the door frame to the surface; the second side wall being positioned at a precise separation from the first wall as established by the setter apparatus; see abstract

### ***Response to Arguments***

Applicant's arguments filed May 18, 2006 have been fully considered but they are not persuasive. Applicant is arguing method and specific use. The prior art references show the specific limitations capable and used as applicant has claimed. Applicant is arguing Eicher is a door buck spreader while his is an apparatus to setting and maintaining the dimensions of a door frame. Both are used during the installation process of a door frame. Most of the claims are directed to the apparatus except for claim 4; applicant is not claiming the combination door frame and spreader. In the case where the combination is claimed, Eicher still meets a majority of the main limitations. Most doors adopt a frame to complete the finished product. Eicher even shows a door

stop. Again Most of the claims are directed toward the apparatus except claim 24. Nothing prevents the device of Eicher from being used as a door frame spreader. Further, applicant has not argued that the elements of Eicher is not shown. Applicant has merely argued use.

The smith reference was cited to show alternative adjustable securing mens is not limited to any one mechanical device. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the references where obtained from adjustable height and width support devices.



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

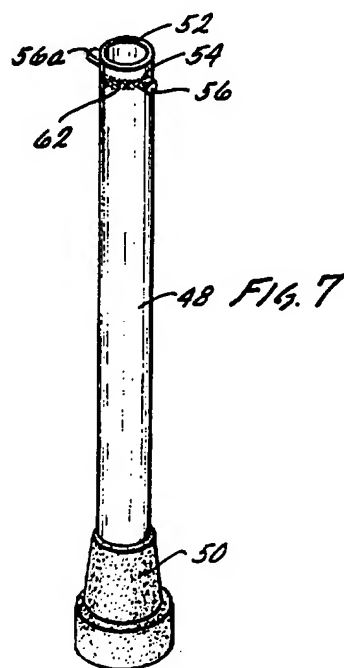
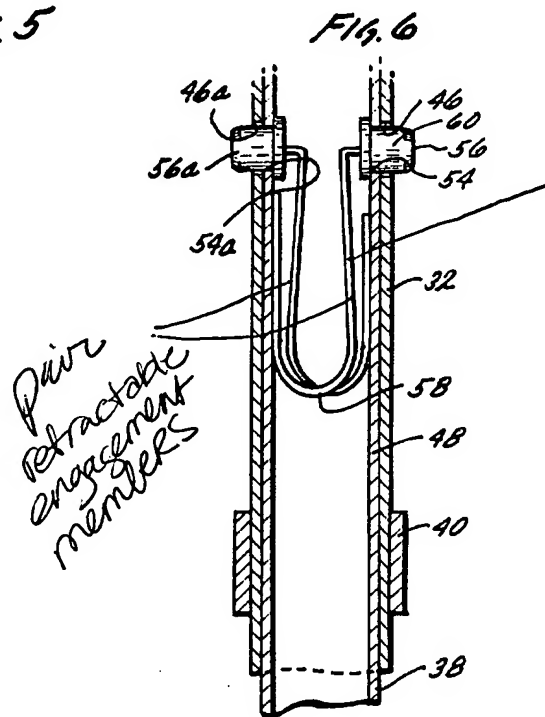
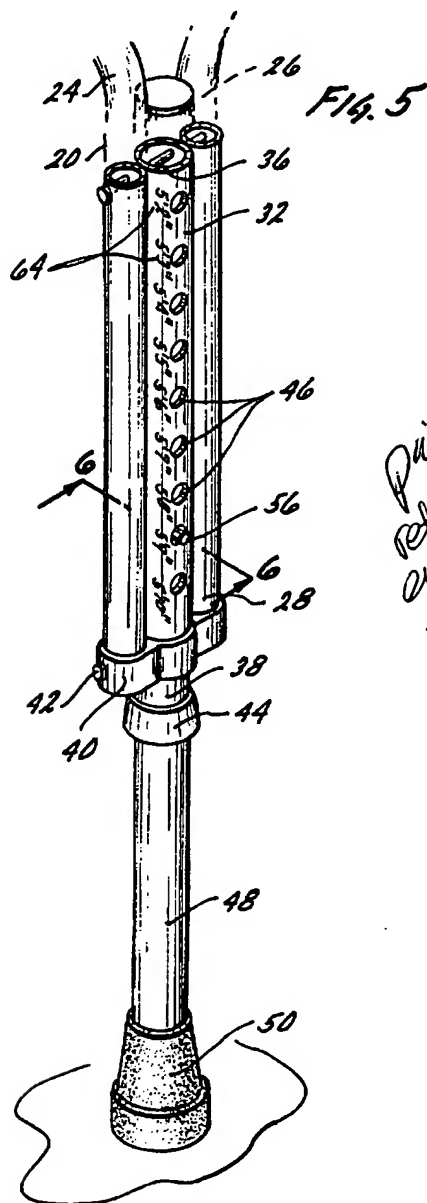
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

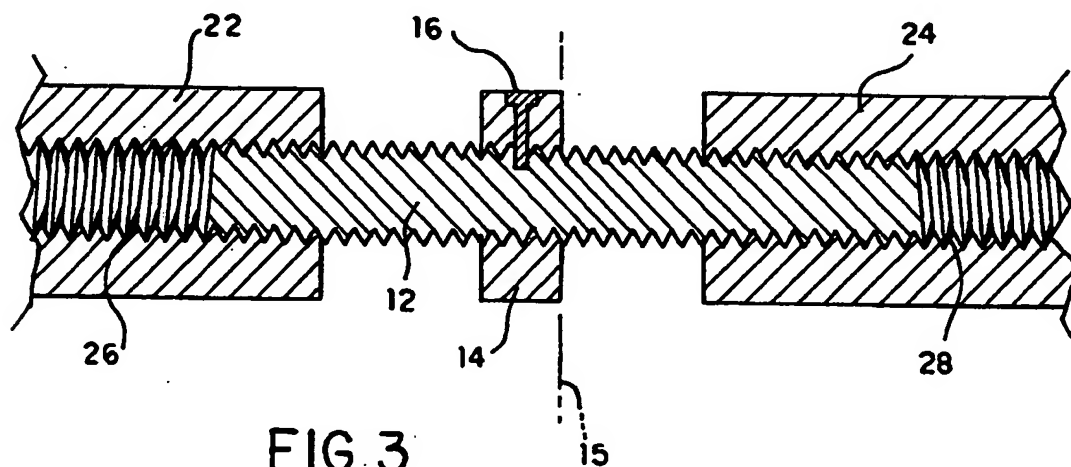
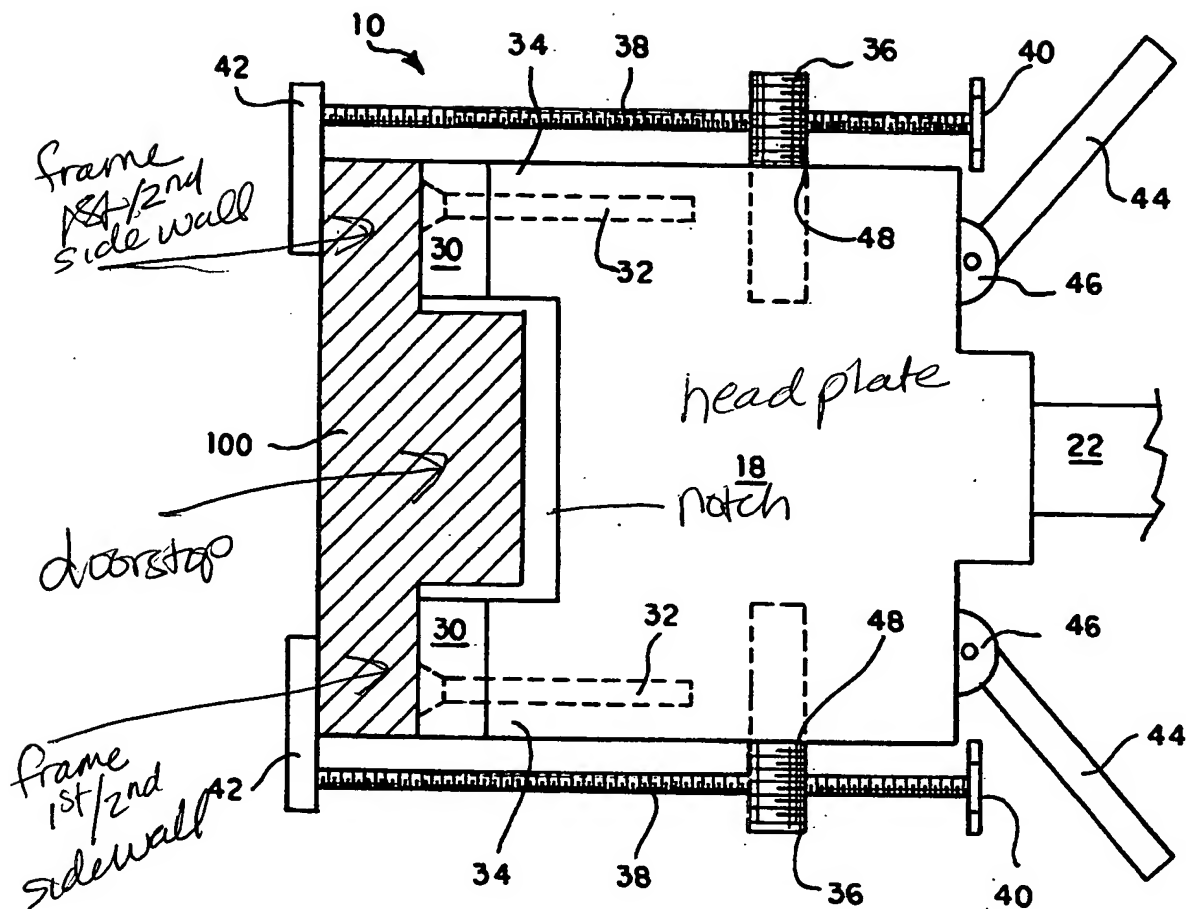
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeanette Chapman  
Primary Examiner



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